

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

SPECIAL PUBLIC MEETING
1178TH MEETING SESSION (6TH OF 2005)

+ + + + +

FRIDAY,
APRIL 29, 2005

+ + + + +

The Special Meeting of the District of Columbia Zoning Commission convened at 10:00 a.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN, Chairperson

ANTHONY J. HOOD, Vice Chairperson

KEVIN HILDEBRAND, Commissioner

GREGORY JEFFRIES, Commissioner

JOHN G. PARSONS, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Office of Zoning

SHARON SCHELLIN, Office of Zoning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

A G E N D A

PRELIMINARY MATTERS 3

None

PROPOSED ACTION 3

(BZA Case No. 17302)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

P R O C E E D I N G S

(10:28 a.m.)

CHAIRPERSON MITTEN: Good morning, ladies and gentlemen. This is a Special Public Meeting of the Zoning Commission of the District of Columbia for Friday, April 29th, 2005. My name is Carol Mitten. Joining me this morning are Vice-Chairman, Anthony Hood, and Commissioners Kevin Hildebrand, John Parsons, and Greg Jeffries.

The single agenda item for our special meeting this morning is consideration of potential for a Sua Sponte review of BZA Case number 17302, which relates to 2750 14th Street, and I'll just lay out the issues as I see them. The order in this case is a summary order, and so it required - in order to understand fully the basis for the BZA decision - it required some review of the record even to be able to bring the case to the Commission; but there are a couple of issues that cause me concern, and that's why I wanted to have the opportunity for the Commission to consider undertaking a Sua Sponte review.

First is that the unique condition that was the basis for the three-prong test of the variance, was a covenant that was put in place. That covenant - I think we need to fully consider the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 manner in which private covenants can be used to meet
2 the uniqueness test - but in part, the covenant did
3 not ?? there was no nexus between the covenant itself
4 and the requirements of the covenant, and the
5 practical difficulty that was alleged; which was, that
6 there was not adequate height for retail. In fact, in
7 the record I think the Applicant testified that they
8 could lease the retail, it just wouldn't be superior
9 retail, and the covenant did not require superior
10 retail.

11 And then there's an additional
12 interpretation by the BZA that in this case, the
13 Monaco case versus the Board of Zoning Adjustment and
14 the interpretation of the Court of Appeals as to the
15 way in which non-profits can be viewed when being
16 granted relief by the BZA, that the BZA can be more
17 flexible. I think the Commission needs to consider
18 whether that, in fact, applies in this case, because
19 the *Monaco* case speaks very specifically to the needs
20 of the non-profit, as opposed to the desires of the
21 non-profit, or the mission of the non-profit. It's a
22 very narrow interpretation, and my concern is that in
23 this case there's a very broad interpretation being
24 made of *Monaco*, which I think will potentially lead to
25 a pretty much wholesale opportunity to get far greater

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 flexibility for non-profits through that
2 interpretation than was intended in the zoning
3 ordinance. So for those reasons, and in addition, the
4 fact that I don't think that the deliberations of the
5 BZA in this case are at all adequately communicated in
6 a summary order, I would move that we have a Sua
7 Sponte review of Case number 17302 on the basis that
8 according to the zoning ordinance under 3128.7, that a
9 basic policy the Commission has expressed in the
10 zoning regulations has been violated as a result of
11 action by the Board.

12 COMMISSIONER PARSONS: Second.

13 CHAIRPERSON MITTEN: Is there discussion?
14 Anyone, discussion?

15 COMMISSIONER PARSONS: We could generate
16 discussion. I mean, I want to concur with everything
17 you said.

18 CHAIRPERSON MITTEN: Okay.

19 COMMISSIONER PARSONS: To me, this is
20 self-imposed. It does not relate to *Monaco* in that
21 context. To me, they should be seeking relief from
22 NCRC, not the Board of Zoning Adjustment. It's
23 getting into the merits of things.

24 CHAIRPERSON MITTEN: Okay. Anyone else?

25 COMMISSIONER JEFFRIES: Yes, I would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 agree. I mean, that's one of the pieces of this
2 that's really I'm curious about. I mean, wondering
3 whether there could be relief given to some level of
4 amendment of the LDA, whether the Applicant was able
5 to seek that.

6 I am concerned, however, again about
7 process versus the outcome, and I am concerned about
8 quality of the building, and the quality of the
9 retail, even given a lot of the missteps by the
10 Applicant. I am very curious to get a sense whether
11 relief can be given in some other fashion, so that our
12 regs are honored; that this does not become a
13 precedent setting case.

14 CHAIRPERSON MITTEN: I'm reminded before
15 we take the vote, and I'd just like to table the vote
16 on the Sua Sponte review first; that first we need to
17 waive our rules regarding the 10-day period that we
18 are given for Sua Sponte review, so first, let me just
19 table the previous motion, and ask - I would move that
20 we waive our rules in order to take this up.

21 COMMISSIONER HOOD: I would second.

22 CHAIRPERSON MITTEN: Okay. All those in
23 favor, please say aye.

24 (Vote taken.)

25 CHAIRPERSON MITTEN: Mrs. Schellin.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. SCHELLIN: Yes. Staff will record the
2 vote 5-0-0 to waive the 10-day time period to take Sua
3 Sponte review. Commissioner Mitten moving,
4 Commissioner Hood seconding, Commissioners Jeffries,
5 Parson, and Hildebrand in favor.

6 CHAIRPERSON MITTEN: Thank you. And thank
7 you for reminding me about that. Okay. Now we're
8 back to the motion, which is whether or not to take
9 the Sua Sponte review. And if there's no further
10 discussion, then I would ask for all ??

11 COMMISSIONER HOOD: Just for the record,
12 Madam Chair, I will say that I'm interested in delving
13 into it, and also to actually look into it, but I'm
14 not sure if I will ?? once we get into it, I'm not
15 sure that I will change anything what the BZA has
16 done. But let me just ask a procedural question; are
17 we going to ask for briefs, or are we going to have a
18 full-blown hearing?

19 CHAIRPERSON MITTEN: Well, I think the
20 initial action by the Commission will be to review the
21 record in its entirety, and then from that point we
22 can decide what we want to do next.

23 COMMISSIONER HOOD: Okay. Thank you.

24 CHAIRPERSON MITTEN: Thank you. All
25 right. Then all those in favor, please say aye.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 (Vote taken.)

2 CHAIRPERSON MITTEN: None opposed, Mrs.
3 Schellin.

4 MS. SCHELLIN: Yes. Staff will record the
5 vote 5-0-0 to approve Sua Sponte review of BZA Case
6 number 17302. Commissioner Mitten moving,
7 Commissioner Parsons seconding, Commissioners
8 Hildebrand, Hood, and Jeffries in favor. And I would
9 just note for the record that this will become Zoning
10 Commission Case number 05-14.

11 CHAIRPERSON MITTEN: Okay. And there's
12 one final order of business, which is typically when
13 we do a Sua Sponte review, not to say that we do it
14 very often, but when we're within our 10-day window,
15 there's an assumption that the order is stayed. And
16 in this case, I would like to make it specific, and so
17 I would move that we stay Order number 17302.

18 COMMISSIONER PARSONS: Second.

19 CHAIRPERSON MITTEN: Any discussion? All
20 those in favor, please say aye. Mrs. Schellin, it's
21 unanimous.

22 MS. SCHELLIN: Staff will record the vote
23 5-0-0 to stay BZA Order number 17302; Commissioner
24 Mitten moving, Commissioner Parsons seconding,
25 Commissioners Jeffries, Hood, and Hildebrand in favor.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: Thank you. And this
2 special meeting is adjourned.

3 (Whereupon, the proceedings in the above-
4 entitled matter went off the record at 10:36 a.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24